

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA

v.

FLORENTINO RUIDIAZ, JR.,

Defendant

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CRIMINAL NO. 05-10214-MLW

**EMERGENCY MOTION FOR HEARING ON PENDING MOTIONS
CONCERNING DEFENSE COUNSEL**

The United States of America , by its attorneys Michael J. Sullivan, United States Attorney for the District of Massachusetts, and Assistant United States Attorney James E. Arnold, hereby submits this emergency motion requesting that this Court set a hearing at the earliest practicable date to address both defendant's motion for new counsel filed May 17, 2006, and defense counsel's motion to withdraw as counsel filed June 9, 2006. As grounds in support of this motion, the United States submits as follows:

1. At the status conference conducted on April 25, 2006, counsel for the United States informed the Court that one of its witnesses, Brockton Police Officer Brian Benvie, had been called up on active duty and was to be shipped to Iraq this summer. Officer Benvie is an important government witness and was one of the police officers who responded to a 911 call reporting shots fired. Officer Benvie participated in the frisk of the defendant, which resulted in the discovery of a fully loaded firearm, and was present at defendant's subsequent arrest. Additionally, Officer Benvie spoke via telephone with the individual who initially called the Brockton Police Department reporting shots fired.

2. At the April 25 Status Conference, this Court orally authorized the taking of a deposition of Officer Benvie pursuant to Rule 15, Fed. R. Crim. P., in order to preserve Officer Benvie's testimony for any possible suppression hearing, as well as for any future trial.

3. After discussion and consultation with counsel for defendant Ruidiaz, the parties this week agreed upon June 20, 2006, as the date on which Officer Benvie would be deposed.

4. On May 17, defendant Ruidiaz filed a motion seeking appointment of new counsel. This motion remains pending.

5. On June 9, 2006, counsel for defendant Ruidiaz filed a motion seeking to withdraw as counsel, stating that "it appears that the attorney-client relationship has broken down." This motion remains pending.

6. Until the issues concerning defendant's representation have been resolved, it will be difficult, if not impossible, for the scheduled deposition of Officer Benvie to occur. If the matters concerning defendant Ruidiaz's counsel are not resolved expeditiously, the Government may lose the opportunity to obtain and preserve Officer Benvie's testimony before he is deployed overseas.

Accordingly, the Government respectfully requests that this Court set defendant Ruidiaz's and defense counsel's motions for a hearing at the earliest practicable time.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

By: /s/ James E. Arnold
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document(s) filed through the ECF system will be sent electronically to counsel for defendant, who is a registered participant as identified on the Notice of Electronic Filing (NEF).

/s/ James E. Arnold
JAMES E. ARNOLD
Assistant United States Attorney

Date: June 9, 2006